

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 491 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

KANUBHAI J RATHOD

Appearance:

1. Criminal Appeal No. 491 of 1990
Ms.Hansa Punani, learned A.P.P. for Appellant No.
MR US BRAHMBHATT for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 15/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.P.DHOLAKIA)

#. This appeal has been preferred by the State under Section 378 of the Criminal Procedure code, 1973 against the order of acquittal passed by the learned Additional Sessions Judge, Sabarkantha at Himatnagar in Sessions Case no. 87 of 1989 on 02.04.1990.

#. The short facts of the case are that on 25.9.89, at about 4.00 p.m., when the complainant and other police personnel were in patrolling in police station area, they received secret information that one person wearing light yellow colour shirt and light cream colour pant is having narcotic substance in his possession and selling the same near Madresa high school, Himatnagar. Therefore, the complainant called two panchas and they were informed regarding the same and on their showing willingness to work as panchas, they all went to the place and caught hold of the accused and on inquiry, it has been found that he was Kanubhai Jesingbhai Rathod of Khedbrahma and during his personal search, one plastic bag containing 9 pills was found from his right side pant pocket which, according to prosecution, was contraband article charas. Panchanama to that effect was prepared and the complainant gave complaint. Thereafter, accused was arrested, statements of witnesses were recorded and the muddammal was sent to the F.S.L. for analysis and thereafter the investigation was handed over to Head Constable Kalyansinh Kodarsinh and at the end of investigation, charge sheet was submitted which was numbered as Sessions Case No. 87 of 1989 and charge was framed against the accused. As the accused pleaded not guilty and prayed for trial, the prosecution examined oral witnesses and also placed reliance on the documents. On completion of the same, further statements of the accused under Section 313 of the Criminal Procedure Code were recorded and after hearing the learned counsel for the respective parties, both the accused were acquitted.

#. We have heard the learned counsel for the parties. Learned A.P.P. for the state submitted that the prosecution has proved beyond reasonable doubt that the muddammal in question has been seized from the accused and also proved that same has been found as contraband article charas and there are no material contradictions which resulted into acquittal and court below ought to have considered the same and ought not to have acquitted the accused. During the course of arguments, she has fairly admitted that it is true that secret information which was received by the complainant was not reduced in

writing. It is also admitted by her that the complainant has also not informed the accused regarding his valuable right to search and seizure before Gazetted Officer or Magistrate. It is also admitted that even weight has not been done at the time of search and seizure. Learned counsel Mr.Brahmbhatt who appeared on behalf of the accused has also argued the same. For that he took us through the above referred evidence and also the reasoned judgment and argued that it does not require any interference.

#. It reflects from the complaint exh. 12, panchanama exh.8 and oral evidence of complainant exh. 11 that when the complainant received secret information, same was not reduced in writing by him. It is also established that before the search and seizure accused was not informed by the P.S.I.regarding his valuable right to search and seizure before the Magistrate/Gazetted Officer which reflects from the evidence of complainant, more particularly, paras 3,4 & 5 of his cross-examination wherein he has fairly admitted the lacuna which is discussed above. It is also established that after the search and seizure and arrest of the accused, he has not informed regarding the same to his superior officer within the period of 48 hours or thereafter also. It is established that even accused and/or relative were also not informed regarding the offence and his arrest. In short, it has been established from the evidence on record that in this case prosecution has failed to comply with the provisions of Sections 42 and 50 of the N.D.P.S.Act as the information which has been received by the concerned officer has not been reduced in writing. In the same way, there is a breach of Section 50 that accused has not been informed regarding his valuable right of search and seizure before the Magistrate/Gazetted Officer and it being a mandatory provision, Court below has rightly acquitted the accused after considering the same along with other aspects of the matter.

#. In view of the above facts and circumstances, this appeal requires to be dismissed and accordingly it is dismissed.

(R.P.DHOLAKIA, J)

(SHARAD D DAVE, J)

srilatha